

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEITH BUSH and
ANTHONY BENNETT,

Plaintiffs,

DECISION AND ORDER

v.

03-CV-759S

GLENN S. GOORD, et al.,

Defendants.

1. Plaintiffs commenced this civil rights action pursuant to 42 U.S.C. § 1983 on October 9, 2003. Service of the Summons and Complaint was effectuated on the Defendants on April 14, 2004. On May 27, 2004, this case was referred to the Honorable Hugh B. Scott, United States Magistrate Judge, for all pretrial matters including report and recommendation on dispositive motions.

2. On February 17, 2005, Plaintiffs filed a document titled "Motion to Dismiss Defendant[s'] Motion to Dismiss." In this self-styled "motion," Plaintiffs argue that Defendants' untimely response to Plaintiff Keith Bush's previous motion for release on parole should be "dismissed."

3. On February 28, 2005, Judge Scott filed a Report and Recommendation, in the form of a text order, recommending that Plaintiffs' Motion to Dismiss, to the extent it could be construed as a dispositive motion, be denied. Judge Scott reasoned that although Defendants' response was untimely filed, Plaintiff Bush has not suffered any prejudice because as set forth in Judge Scott's Order of February 16, 2005, this Court cannot order Plaintiff Bush's release on parole on the facts of this case.

4. On March 9, 2005, Plaintiffs filed Objections to Judge Scott's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

5. This Court has considered Judge Scott's Report and Recommendation and Plaintiff's Objections thereto. Upon due consideration, this Court will accept Judge Scott's recommendation to deny Plaintiffs' Motion to Dismiss insofar as it can be construed as a dispositive motion. Plaintiff's Objections are therefore denied.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's February 28, 2005 Report and Recommendation (Docket No. 44) for the reasons given therein.

FURTHER, that Plaintiffs' Objections (Docket No. 47) are DENIED.

FURTHER, that Plaintiffs' Motion to Dismiss (Docket No. 37) is DENIED.

SO ORDERED.

Dated: August 30, 2005
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge